past type of use. Though this aims at a closer approximation to actual compensation it would secure it only on the assumption that the plaintiff's efficiency is a constant. But it seems that the plaintiff should rather be entitled to charge the defendant a fair rental for the period of detention. Any clearly consequential damages arising proximately from the detention should also be recoverable. *O'Connor* v. *Bank of New South Wales*, 13 Vict. L. R. 820. See *Stevens* v. *Tuite*, 104 Mass. 328, 334.

DAMAGES — MEASURE OF DAMAGES: CONTRACTS — DAMAGES FOR BREACH OF A CONTRACT TO FARM ON SHARES. — By contract, the plaintiff was to furnish the labor in planting, cultivating, and preparing for market a crop of tobacco; the defendant was to furnish the land and materials, and the proceeds of the crop were to be divided equally. The defendant refused to allow the plaintiff to enter. Suit was brought immediately, before time for planting had arrived. *Held*, that the plaintiff cannot recover at this time. *Turpin* v. *Jones*, 225 S. W. 465 (Ky.).

For a discussion of the principles involved in this case, see NOTES, page 662, *supra*.

EVIDENCE — CORROBORATIVE EVIDENCE — DEGREE OF CORROBORATION REQUIRED. — The complainant brought proceedings under the Bastardy Act (35 & 36 VICT., c. 65) to charge the defendant with being the father of her illegitimate child. The act requires that the testimony of the complainant be corroborated in order to charge the putative father. It was proved in attempted corroboration (1) that the defendant called a doctor to attend the complainant when the child was born, (2) that he allowed the complainant and her child to remain in his house for five weeks after the birth, (3) that he never inquired as to the paternity of the child, (4) that he failed to answer a letter sent him by the complainant, charging him with being the father of her child. It also appeared that the complainant had been the defendant's housekeeper for three years. *Held*, that there was no sufficient corroboration of the complainant's testimony. *Thomas* v. *Jones*, [1921] 1 K. B. 22 (C. A.).

For a discussion of the principles involved in this case, see NOTES, page 667, *supra*.

EVIDENCE — DECLARATIONS CONCERNING INTENTION, FEELINGS OR BODILY CONDITIONS — ADMISSIBILITY OF AN UNCOMMUNICATED THREAT IN HOMICIDE CASE. — The defendant, on trial for murder, offered evidence of a threat against him made by the deceased but uncommunicated to him. Though there was great doubt as to which was the aggressor, this evidence was excluded. *Held*, that the exclusion was error. *Mott* v. *State*, 86 So. 514 (Miss.).

Communicated threats are relevant to show that the defendant acted reasonably in defending himself. Uncommunicated threats, which have no logical bearing to prove this, are relevant to show that the deceased was the aggressor when this point is in controversy on an issue of self-defense. *Stokes* v. *People*, 53 N. Y. 164. Considered as verbal acts such statements are not within the hearsay rule. But even if the hearsay rule does cover them, they come within the exception which permits such evidence to prove the speaker's state of mind. See *Mutual Life Ins. Co.* v. *Hillman*, 145 U. S. 285. Nevertheless danger of improper use and ease of manufacturing this kind of evidence have led to limitations on its admissibility. See 1 WIGMORE, EVIDENCE, § 111. No jurisdiction admits it where it is clear that the defendant was the aggressor. *State* v. *Tolla*, 72 N. J. L. 515, 62 Atl. 675. Many jurisdictions require that there be great doubt as to which was the aggressor before this evidence will be admitted. *Johnson* v. *State*, 54 Miss. 430. But the general and correct rule seems to be to admit it wherever there is any other evidence of an overt act by the deceased, or if there was no eyewitness to the act. Threats not directed

against the defendant, and vague, indefinite threats in general are not admissible. *Henson* v. *State*, 120 Ala. 316, 25 So. 23; *Carr* v. *State*, 23 Neb. 749. To rebut this evidence, the prosecution may offer testimony of the deceased's peaceful plan. *State* v. *Chaffin*, 56 S. C. 431, 33 S. E. 454.

HUSBAND AND WIFE — RIGHTS OF WIFE AGAINST HUSBAND AND HIS PROPERTY — WIFE'S RIGHT TO SUE HER HUSBAND FOR TORTS — ASSAULT. — The plaintiff sues her husband for having infected her with venereal disease during marital intercourse. *Held*, that she may recover. *Crowell* v. *Crowell*, 105 S. E. 206 (N. C.).

At common law the wife could not have maintained this action. See STEWART, HUSBAND AND WIFE, § 48. It was at first held that the statutes separating the personalities of the husband and wife in no way altered the inhibition. *Thompson* v. *Thompson*, 218 U. S. 611. See 11 HARV. L. REV. 479; 24 HARV. L. REV. 403; SALMOND, LAW OF TORTS, 5 ed., 76; COOLEY, LAW OF TORTS, 2 ed., 268. But the modern tendency has been, by liberal construction of such statutes, to permit her to sue for her husband's personal tort to her. See 28 HARV. L. REV. 109. The principal case agrees with this sounder tendency. See *Thompson* v. *Thompson*, 218 U. S. 611, 619 (dissent of Harlan, Holmes, and Hughes, JJ.); *Fitzpatrick* v. *Owens*, 124 Ark. 167, 186 S. W. 832, 187 S. W. 460; *Johnson* v. *Johnson*, 201 Ala. 41, 77 So. 335; *contra*, *Schultz* v. *Christopher*, 65 Wash. 496, 118 Pac. 629. Granting the wife her right to sue, has the husband a valid defense in the consent implied from the marital relation? The court barely considered this fundamental question. Consent is a recognized defense to an action for assault. *Reg.* v. *Wollaston*, 12 Cox C. C. 180. Where a syphilitic man had intercourse with a girl ignorant of his disease, it was held that her consent was vitiated by his deceiving her. *Reg.* v. *Bennett*, 4 F. & F. 1105; *Reg.* v. *Sinclair*, 13 Cox C. C. 28. But it is not a question of fraud, for there is in these cases no consent. The married woman consents to the battery incident to connubial intercourse, but in no wise to contact with virus, an alien element to which her mind never adverted. See J. H. Beale, "Consent in Criminal Law," 8 HARV. L. REV. 317, 319. It is a relief to observe that the erroneous and disgraceful doctrine of *Reg.* v. *Clarence* has not gained place in this country. See *Reg.* v. *Clarence*, 16 Cox C. C. 511. See 76 JOUR. AM. MED. ASSOC. 249.

ILLEGAL CONTRACTS — CONTRACTS AGAINST PUBLIC POLICY — "KNOCK OUT" AGREEMENT NOT TO BID AT GOVERNMENT AUCTION. — The plaintiff and defendant met each other at an auction of Government stores. To avoid competition they agreed that the defendant alone should bid, and, if he secured the goods, they would share the transaction. The goods were knocked down to the defendant, who refused to account to the plaintiff. *Held*, that the contract was valid. *Rawlings* v. *General Trading Co.*, 151 L. T. 4 (C. A.).

It seems settled in England that a "knock out" contract is enforceable. *Galton* v. *Emuss*, 1 Coll. 243; *In re Carew's Estate*, 26 Beav. 187; *Heffer* v. *Martyn*, 36 L. J. Ch. 372. This is only qualifiedly so in America. See *Gibbs* v. *Smith*, 115 Mass. 592, 593; see 3 WILLISTON, CONTRACTS, § 1663. Where the purpose of the contract is that the parties together secure property, all of which neither wishes for himself, the contract is valid. *Marie* v. *Garrison*, 83 N. Y. 14; *Kearney* v. *Taylor*, 15 How. 494. On the other hand, where, as in the principal case, the object is to prevent competition and reduce the price, the contract is void. *Devine* v. *Harkness*, 117 Ill. 145, 7 N. E. 52; *Boyle* v. *Adams*, 50 Minn. 255, 52 N. W. 860. The agreement is regarded not only as against public policy, but also as fraudulent. See *Smith* v. *Greenlee*, 13 N. C. 126, 128; see *Dudley* v. *Little*, 2 Oh. 504, 505. It might still be argued that the plaintiff should recover on analogy to the doctrine permitting an action by a